IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1509 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BAI KARMA JEVTA (MALVI) PATEL & 3 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR BN PATEL for Petitioner(s) : 1 - 4.
MS.NISHA PARIKH, ASSTT.GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/06/2007

ORAL JUDGMENT

1. Shri B.N.Patel, learned counsel for the petitioners; Ms. Nisha M. Parikh, learned AGP for the State.
2. Present is a writ petition filed in the year

1997 challenging the order passed by the Gujarat Revenue Tribunal on 21.12.83 in Revision Application No.TEN.B.A. 937/82.

3. Shri B.N.Patel, learned counsel for the petitioners submits that after the order was passed by the Gujarat Revenue Tribunal, under some misconceived legal advice, the petitioners had filed the Civil Suit and prayed for interim injunction. The learned trial court rejected the application for interim injunction and thereafter, the order was confirmed by the learned Assistant Judge, Banaskantha in Civil Misc. Appeal No. 77/88 on 16.1.93 and thereafter, the the petitioners under the bona fide legal advice have filed the present writ application.

4. The short facts, necessary for disposal of the present writ application are that the petitioners jointly own 55 Acres and 1 Guntha of land at village Benap, Taluka-Vav in District-Banaskantha. The respondent no.3, vide his order dated 4.9.81 held that the petitioners would be entitled to one unit and were in surplus possession of 14 Acres and 1 Guntha. The order came to be challenged before the respondent no.2, but the appeal came to be dismissed on 30.1.82. The order passed by the appellate authority was challenged before the Gujarat Revenue Tribunal in Revision Application No. TEN B.A. No. 937 of 1982. However, the revision came to be rejected on 21.12.83.

5. In the Civil Suit filed by the present petitioners, the State Government had submitted that after the land was declared surplus, compensation was offered to the petitioners and the petitioners had accepted the compensation which would lead to the only conclusion that they were not aggrieved by the orders passed by the Revenue authorities and the Revenue Tribunal and were satisfied with the compensation amount. Learned Civil Judge, in his order, held that the receipt was executed by Khemiben Patel as joint owner and it was not shown on the records that at any point of time, either Khemiben or the other three petitioners – daughters of the petitioner no.4 ever challenged the genuineness or validity of the said receipt. He accordingly rejected the prayer for interim injunction and thereafter the order was confirmed in appeal.
6. Shri Patel, learned counsel for the petitioners submits that the petitioners being illiterate could not understand the importance of the compensation money and execution of the receipt, therefore, the receipt should not assume any importance against the petitioners.
7. In the opinion of this Court, when money is offered under the head of compensation and the same is received without any protest or any objection, then, that would simply mean that the party receiving the money was ready and willing to accept the money as joint owner for

and on behalf of the other owners of his/her own free will. Once such action is taken by the joint owner/joint owners, they would not be allowed to challenge the orders passed by the authorities.

8. From the facts, it would again appear that the order dated 21.12.83 was not immediately challenged before this Court, but was subjected to challenge in the Civil Suit. In the suit, the appellate authority refused an injunction on 16.1.93 and even thereafter, writ was not immediately filed but was filed almost after four years of the rejection of the appeal by the learned Assistant Judge, Banaskantha. The delay between 1993 to 1997 remains unexplained. Submission of the petitioners that they did not know about passing of the order dated 16.1.93, therefore, could not approach this Court immediately is not reliable.

9. In the year 1988, the learned Civil Judge had relied upon the receipt executed by Khemiben Patel, but even after 1988 up to the year 1993, when the appeal was dismissed, the said receipt, its contents and its binding effect and nature were never challenged by any of the petitioner or by all the petitioners. The petition is unduly belated. On the merits, this Court must hold that if there are joint owners of the property and family is not joint family, then, in absence of the partition, they would be entitled to one unit. Submission of Shri

Patel that, if it is a family, then, all the minor children are to be taken into consideration and if the total number of the family goes beyond five, then, each member is entitled to 1/5th of the unit, cannot be accepted, because, the petitioners' case is that they are joint owners and not members of the family.

10. I find no reason to interfere. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S. GARG, J.]

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